IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(MAIN) NO. 338 OF 2006

Shri Uttam Falkar,
s/o Mahadev Falkar,
major in age, married,
agriculturist, r/o H.No. --
Vailifal, Kudne, Bicholim,
Goa. ... Applicant

versus

1. The State, through Bicholim
   Police Station, Bicholim,
   Goa.

2. Shri Tulshidas N. Khandekar,

3. Shri Rama Saju Khandekar,
   both r/o Vailifal, Kudne,
   Bicholim, Goa. ... Respondents

Mr. N. K. Sawaikar, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the
State/Respondent No.1.

Mr. V. P. Thali, Advocate for the Respondent Nos.2 and 3.

CORAM : N. A. BRITTO, J.

DATE : 2ND FEBRUARY, 2007.

ORAL ORDER

Heard the learned Counsel on behalf of both the parties. The applicant is the respondent in proceedings initiated under Section 133 of the Code of Criminal Procedure, 1973 (Code, for short) against him at the behest of the Village Panchayat of Kudne. It appears that after the Village Panchayat of Kudne submitted an application to the Executive Magistrate, dated 15-6-2005, it was got verified through Bicholim Police Station and the Bicholim Police Station submitted a report dated 4-7-2005 confirming that there was a footpath cum road which was closed due to a fallen mango tree. Admittedly, this footpath cum road falls in the property surveyed under No.180/21 which is part of the property purchased by the applicant before the Executive Magistrate, by sale deed dated 4-3-1992. Based on the said report submitted by the Police, the Executive Magistrate issued a conditional Order dated 26-7-2005. Before filing the reply, the applicant filed an application to drop the proceedings,

dated 29-8-2005 and subsequently filed his reply dated 31-8-2005 contesting the existence of a public way through his said property. The application dated 29-8-2005 to drop the proceedings came to be dismissed by the learned Executive Magistrate by Order dated 12-9-2005. A revision filed against it to the Court of Sessions came to be rejected by Order dated 14-7-2006 of the learned Additional Sessions. The learned Additional Sessions Judge observed that the applicant had not made out a case for dropping the proceedings. The contention of the applicant is that there was no footpath cum road or a way used by the public shown in his sale deed dated 4-3-1992 inasmuch as there is otherwise also no such way in existence, as claimed by the respondents Tulshidas N. Khandekar and Rama Saju Khandekar and others by filing an application to the Village Panchayat, Kudne.

2. On behalf of the applicant, reliance has been placed on the cases of **Manuel Philip Perreira** v. **State**(AIR 1967 GDD 1), **Abdul Wahid** v. **Abdullah Khan**(AIR 1924 Allahabad 1) and **Kachrulal Bhagirath Agrawal and others** v. **State of Maharashtra and others**((2005) 9 SCC 36).

3. I have perused the said cases which deal with different fact situations. In the case at hand, based on the police report and on being satisfied of the existence of a footpath cum road which is used by the public and which is blocked due to the falling of a mango tree, the learned Executive Magistrate issued the conditional Order. The said conditional Order was issued on the material placed before him and on his prima facie satisfaction on the basis of the same. In case, there is no such way as claimed either by the said applicants or on their behalf and of others by the Village Panchayat, the said question could be gone into only in an inquiry as contemplated under sub-section(1) of Section 137 of the Code.

4. In my view, no fault could be found with the impugned Orders. This is not a fit case for interference in extraordinary jurisdiction. Application is therefore hereby dismissed.

5. Considering the nature of the proceedings, it is expected that the learned Executive Magistrate will expedite the

same and complete the proceedings as expeditiously as possible and in any manner within a period of six months.

N. A. BRITTO, J.

RD